

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA

-v-

ERIC ROBERT RUDOLPH

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CR 00-S-422-S

NOTICE OF GOVERNMENT
REGARDING THE FILING OF OUT OF TIME MOTIONS AND BRIEFS

Comes Now the United States of America by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama and Michael W. Whisonant; William R. Chambers; Jr., Robert J. McLean, Assistant United States Attorneys, and advises the Court of the need for additional time to respond to the defendant's Motion To Strike the Death Penalty and in support says as follows:

1. This Court's Amended Scheduling Order of December 30, 2003 provided at paragraph II c. "Any motion challenging the legality or constitutionality of the death penalty as applicable to this case shall be filed no later than March 1, 2004."

2. The Order also provided in part in paragraph II. h. "All evidentiary materials and briefs in support of a motion shall be filed simultaneously with the motion: failure to comply with this requirement shall be a ground for denying the motion summarily. All evidentiary materials and briefs in opposition to a motion shall be filed no later than thirty (30) calendar days after the date of service of the motion so opposed or the date provided herein for filing a response to a motion, whichever is earlier."

3. On March 1, 2004 defendant filed a Motion to Strike the Death Penalty. That motion challenged both the legality and constitutionality of the death penalty.

4. The United States was prepared to respond to the motion in accordance with the Court's Amended Scheduling Order on March 31, 2004. On that day the Court held a status conference with the parties. During the course of that conference defense counsel informed the court and prosecution that they would file another motion dealing with the legality or constitutionality of the death penalty either that day or the next and a third motion next week.

5. In fact, on March 31, 2004 the defendant did file a Motion To Dismiss Notice Of Special Findings And Government's Notice of Intent To Seek The Death Penalty And For Other Appropriate Relief. This motion was clearly filed outside the time allowed by the Court's Order.

6. After being advised that the defendant would be filing these out of time motions, an Assistant United States Attorney addressed the Court and asked that the United States be allowed to address all of the defense's motions regarding the legality or constitutionality of the death penalty in a single response as opposed to piecemeal. The Court indicated that would be appropriate and inquired how long the United States would need to prepare a response. The Assistant United States Attorney advised that a response could be filed in approximately two (2) weeks from the time of the last filing by the defendant. The Court stated that the United States would be allowed a reasonable time in which to respond to the defendant's motions.

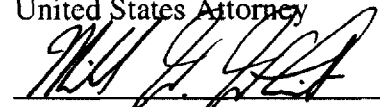
7. It should also be noted that this Court's Amended Scheduling Order at paragraph II. b required that "Any motion addressed to change of venue shall be filed by January 30, 2004." In fact the defendant did timely file such a motion. However, the defendant continues to prepare a supplement to that motion. During the aforesaid status conference the defense advised the Court and the parties that a supplemental motion would likely be filed sometime around the end of April or first of May. The Court has previously advised the United States that a response would

not be required until a reasonable time after the defendant has filed all of his change of venue motions.

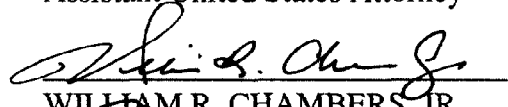
7. The United States respectfully requests that the Court require the defense or any party to advise the Court and parties if it is unable to meet the deadlines set out by the Amended Scheduling Order via proper motion for an extension of time for filing or modification of the scheduling order. Also, that such motion state any reasons which would support the need for an extension of time for filing or modification of the scheduling order. The motion should be filed as far in advance of any deadline as possible in order to allow the parties to respond and the Court to properly consider the matter.

Respectfully submitted this the 2nd day of April, 2004

ALICE H. MARTIN
United States Attorney



MICHAEL W. WHISONANT
Assistant United States Attorney



WILLIAM R. CHAMBERS, JR.
Assistant United States Attorney



ROBERT J. MCLEAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date by First Class, United States mail, postage prepaid, to his attorneys of record: Mr. Richard Jaffee, Jaffee, Strickland & Drennan P.C., 2320 Arlington Avenue, Birmingham, Alabama 35205; Ms. Judy Clark, Federal Public Defenders of San Diego, Inc., 225 Broadway, Suite 900, San Diego, California 92101; Mr. William Bowen, White, Dunn & booker, 2025 3rd Avenue North, Suite 600, Birmingham, Alabama 35203; Mr. Michael Burt, Law Offices of Michael Burt, 600 Townsend St., Suite, 329-E, San Francisco, California 94103; and Mr. Emory Anthony, Law Offices of Emory Anthony, 2015 1st Avenue North, Birmingham, Alabama 35203.



MICHAEL W. WHISONANT
Assistant United States Attorney